

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 254 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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MESSRS. KHEDUT HAT

Versus

M/S. SUBHANSONS EXPLOSIVE CORPORATION

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Appearance:

MR PM THAKKAR for appellant

NOTICE UNSERVED for Respondent No. 1, 2

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CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 22/06/1999

ORAL JUDGEMENT (Per: J.M.Panchal, J.)

Pursuant to office submission, the appeal is placed before the Court to direct the learned advocate for the appellant to supply certain necessary papers like

pleadings (plaint and written statement) etc. as well as for issuing fresh notice to the respondents Nos.1 and 2 so that the appeal can be made ready for final hearing and can be placed before the Court for hearing as well as early disposal.

2. The appeal is directed against judgment and decree dated September 1, 1982 rendered by the learned Civil Judge (Sr.Divn.), Gondal in Special Civil Suit No.10 of 1979 by which suit filed by the appellant for recovery of Rs.1,06,394/- being difference of central sales tax and interest of Rs.42,849=49 came to be dismissed. On admission of the appeal, notice was issued to the respondents Nos.1 and 2. Notice issued to respondent No.1 was returned unserved with remarks "not known" whereas notice issued to respondent No.2 was returned unserved with remarks "no such person residing at given address". Therefore, the learned counsel for the applicant filed Civil Application Stamp No.14082/1986 in First Appeal No.254/1986 with a prayer to issue fresh notice to respondent No.2 at the fresh address stated in the application whereas Civil Application Stamp No.14083/1986 was filed with a prayer to issue fresh notice to respondent No.1 at the fresh address stated in the said application. However, both these applications were not signed by the learned counsel nor fresh addresses of the respondents were supplied in paragraph 2 of the applications. Under the circumstances, the Court by an order dated January 21, 1987 directed the applicant to remove office objections raised by office in two applications on or before February 5, 1987 and it was stipulated in the said order that the matter would stand dismissed for non-prosecution if objections were not removed by the specified date. Again, at the instance of the learned counsel for the applicant, time to remove office objections was extended upto February 26, 1987, but by that date, the office objections could not be removed. Therefore, both the applications stood dismissed for non-prosecution in view of conditional order of the Court and necessary entries to that effect were made in the relevant register after informing the learned counsel for the applicant. Even as on today, the learned counsel for the appellant is not able to give fresh addresses of the respondents and, therefore, it is not possible to effect service of notice on the respondents. The applicant has not taken steps to serve the respondents and in absence of service of notices on the respondents, the appeal cannot be heard on merits at all. Under the circumstances, the matter will have to be dismissed for non-removal of office objections.

3. For the foregoing reasons, the First Appeal No.254/1986 is dismissed for non-prosecution with no order as to costs.

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